

the elected species. We now believe that the amended Claim 1 has laid a sufficient foundation for the inclusion of both species that we again ask for examination of both. Functionally, there is little difference between the two structures; they are merely esthetically different. In the species with the double-chambered vessel, there is a screen or a multiplicity of holes between the two chambers. In the tapered vessel, a screen can be inserted at a specific point along the direction of the flow of water when it leaves the vessel. This difference is structural, rather than functional. Therefore, we request that the nonelected species again be examined, along with the elected species.

As will be further discussed in this document, the prior art inventions do not have such a screen or multiplicity of holes as part of their structure. Indeed, such a feature would be completely superfluous for keeping photographic prints in place. The prior art inventions do not contemplate washing or rinsing any other objects.

We also believe that the rejection based on Brandt (U.S. Pat. No. 2,141,162) and Dodson (U.S. Pat. No. 2,861,509) is inappropriate. A rejection on obviousness grounds should bear some reasonable relationship to the references cited. In the case of both references, they teach refillable trays specifically for washing photographic prints. Indeed, the claims of both references are drawn narrowly to that application, and no other application is contemplated. The present invention, on the other hand, contemplates the washing of foodstuffs, specifically rice, in the preferred practice of the invention. While other small items may be washed using the present invention, it is not contemplated that photographic prints are within the scope of the practice of the invention. Since photographic prints are essentially always flat and rectangular in shape, the two-chambered vessel or the tapered vessel disclosed in the present invention are totally unsuitable for rinsing photographic prints. Neither would the Brandt or Dodson inventions work for rinsing grains of rice or other small objects, which is the primary objective of the present invention. Accordingly, we do not believe that Brandt 162 and Dodson 509 are suitable references against this invention.

We respond to the comments concerning specific claims as follows:

We note that Claims 4 and 35 are not withdrawn from consideration, rejected or objected to in the June Office Action. Accordingly, we request that a determination be made regarding each of those claims. The status of Claim 24 and 25 is also unclear. The office Action Summary states that those claims are objected to, rather than rejected. Paragraph 6 of the Office Action states that Claims 26 to 32 would be allowable if they are appropriately rewritten. We believe that Claims 24 and 25 should be accorded the same status as Claims 26 through 32, since Claim 26 depends on Claim 25, which depends on Claim 24.

We also believe that Claim 4 should be accorded the same status. Claims 5 and 6 would be allowable if rewritten, and they depend on Claim 4. Claim 4 is actually the first recital of a vessel comprising two chambers, and Claims 5 and 6 provide narrower embodiments of Claim 4.

We disagree with the rejection based on Section 102(b), mentioned in Paragraph 3. In actuality, the scope of the claims in prior art inventions should be taken on their face. Brandt 162 (1938) contains seven independent claims, each drawn to “An appliance of the nature disclosed for washing photograph prints and the like” or “a washer for photographic prints and the like.” Similarly, the single claim of Dodson 509 (1956) is drawn to “a photographic washer.” While it may be reasonable to allow some leeway in interpreting the scope of a claim, every one of the claims in the cited references refers specifically to washing photograph prints. No other application is mentioned. It is entirely proper for us to insist that the claims of the cited reference be construed as having the scope they claim on their faces. The present invention was conceived primarily for rinsing rice prior to cooking. It can also be used to rinse other small food or nonfood items, but these items are clearly beyond the scope of the photographic print washers contemplated by Brandt and Dodson.

If the photographic rinsing trays taught by Brandt and Dodson were used for the intended purpose of the present invention, they would not work. If Brandt’s tray were used to rinse rice, the

uncooked rice would accumulate at the deep end of the pan. Depending on the length of the tray inside the pan, some of the rice might also stick to the tray, rendering the invention totally inutile for the intended purpose. Moreover, the hole used for discharge of rinse water is not screened, so rice (or any other small object to be rinsed) could escape from the pan through outlet 4. If the discharge hole in the Brandt invention were screened, the rice or other small objects being rinsed would plug it up, thereby rendering the device unworkable for the purpose of the present invention. Again, the Brandt design defeats the intended purpose of the present invention.

Using the Dodson tray for the intended purpose of the present invention would produce even worse results. If the valve comprising stem 20 and disk 21 were capable of opening, rice would escape with the rinse water. If it were screened, the rice (or other objects to be rinsed) would again plug up the screen, preventing water from getting out and making it completely unworkable. If the rice in the tray were sufficiently heavy, the valve might not open at all. This would totally defeat the purpose of the device. In either case, the result is a thoroughly unsatisfactory and unworkable situation, requiring a greater effort to clean up than is required to use currently-available implements for rinsing rice or other small items.

Both the double-chambered vessel and the tapered vessel disclosed in the present application involve the discharge of the rinse water from a level above the location of the rice or other items to be rinsed. This feature alone renders the present invention patentably distinct from the cited references. Indeed, it is essential to keep the rice or other items to be rinsed from escaping from the vessel, while liquid is poured out of the vessel from a higher level. It is the repeated rinsing in this manner that renders the rinsing operation sufficiently thorough to fulfill the purpose of the present invention. Since Brandt 162 and Dodson 509 do not operate in the manner of the present invention, the conclusion that they “clearly anticipate” the present invention should not be made. Therefore, we request that the rejection of Claims 1-3, 9-18 and 23 be withdrawn.

There is no mention of Claim 35, a Jepson-type claim, in the Office Action. The previous remarks apply to the applicability of Brandt 162 and Dodson 509 as references against the present invention generally. Since the purpose of the present invention could not be fulfilled using either of the referenced prior art inventions, Claim 35 should also stand.

The previous arguments also apply to the Section 103(a) rejection stated in Paragraph 5 of the Office Action. We disagree with the allegation that the present invention is obvious, in light of Dodson. Dodson teaches a disk that covers the outlet hole, with a stem extending below it. Dodson does not use a spring to bring his tray back to horizontal orientation. Instead, Dodson's tray must be so carefully balanced that only the negligible weight of a photographic print would be insufficient to upset that balance. If an attempt were made to rinse rice or other objects using Dodson's device, those objects would flow toward the discharge hole during water discharge, thereby weighting down the device, so it cannot right itself again. This renders the device unworkable for the intended purpose of the present invention.

While Brandt uses a spring, the purpose of Brandt's spring is totally different than for the spring in the present invention. In Brandt, "the periodicity of tilting is frequent and the timing can be regulated by varying the load at the water supply end of the tray, or sustained against tilting" (col. 2, lines 63-66). The spring in the present invention does not fulfill such a purpose, which indicates that it would not have been obvious to use a spring as used in the present invention, just because Brandt used one for a different purpose. Moreover, there is nowhere in Brandt's structure that a weighted member could be used to fulfill the same purpose as the spring fulfills. This alone precludes the spring and the weighted member in the present invention from being functional equivalents for the purpose of an "obviousness" rejection.

The unique shape of each of the embodiments of the present invention is what causes the water to spill out during the rinsing operation. In either embodiment, the addition of sufficient water to make the vessel "top heavy" is what causes the vessel to tip over and expel the water. In

actuality, the vessel itself is sufficiently heavy to right itself after all (or essentially all) of the water that had been in the vessel is expelled. This is due in part to the fact that the rice or other objects to be rinsed remain “behind” the center of gravity after the vessel empties, since the screen keeps the objects from being carried too far with the water flow during the emptying cycle.

The Comment to MPEP 2144.06 supports our position on this issue. As the Comment states:

In order to rely on equivalence as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on the applicant’s disclosure or the mere fact that the components at issue are functional or mechanical equivalents. *In re Ruff*, 256 F.2d 590, 118 USPQ 340 (CCPA 1958).

Moreover,

An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

In the present invention, a weighted member or a spring is used to return the vessel to a position whereby it can receive more water. Brandt teaches the use of a spring, but not in the same way as the present invention. Neither Brandt nor Dodson uses a weighted member. Indeed, neither of the prior art inventors discloses nor claims the use of a weighted member. The potential equivalency of the weighted member or the spring as disclosed in the present invention is never mentioned in the prior art. This is analogous to the *Ruff* situation. The present inventor’s suggestion that either a spring or a weighted member can be used for the same purpose does not even rise to the “express suggestion to substitute one component or process for another” found in *Fout*. In view of this, we believe that Claims 20 to 22 should not have been rejected under 103(a).

In addition, the present invention includes a stand upon which the vessel sits during use. The stand contains Stopper 17, which keeps the vessel placed in a horizontal position while it is being filled, until the weight of the water (or other liquid) placed into it overbalances the main chamber or bottom of the tapered vessel, and the liquid is discharged. Neither Brandt nor Dodson

recite an equivalent structure for keeping their trays in place. Given these major differences in structure, it cannot be reasonably assumed that the present invention is obvious in light of Brandt or Dodson. Moreover, the purpose of the spring or weighted member in the present invention is to restore the vessel to horizontal orientation after liquid is discharged. There is no similar structure or purpose in either of the cited references. Indeed, the spring in Brandt 162 cannot be replaced by a weighted member. Claims 20-22 are drawn to the use of a weighted handle or similar member to bring the vessel back to horizontal orientation upon a stand that is part of the invention. It appears that rejecting this structure as allegedly obvious, merely because a prior invention used a spring for another purpose, construes the provisions of MPEP 2144.06 far too broadly. We request, therefore, that Claims 20-22 be allowed.

At this time, Dodson 509 is 48 years old and Brandt 162 is 68 years old. Newer inventions were made of record, but not relied upon. It appears that, if any newer inventions were more like the present invention than the prior art actually relied upon; they would have also been cited. This means that there have been no advances in the field of washing or rinsing foodstuffs or other small articles (exclusive of photographic prints) for nearly five decades. The present invention teaches a different structure and purpose than either of the cited prior art references. With the amendments made to Claim 1, the entire invention should now be in a better position for allowance.

We hope that the amendment submitted here brings the application to a position for allowance. We also request that the non-elected species be re-examined, so that both of the disclosed embodiments of the invention (shapes for the vessel) are again considered in this application.



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